

RESOLUTION 2017 - 18

 ORIGINAL

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, AUTHORIZING
THE CITY MANAGER TO EXECUTE
AN ENGINEERING SERVICES AGREEMENT
WITH HLA ENGINEERING AND LAND SURVEYING, INC.
FOR THE SUNNYSIDE MUNICIPAL AIRPORT
RUNWAY / TAXIWAY IMPROVEMENTS**

WHEREAS, the City Council of the City of Sunnyside authorized the submittal of the grant application for funding of the Runway/ Taxiway Improvements Project; and

WHEREAS, in order to proceed with the project it is necessary to have the City Manager execute the Engineering Services Agreement in the amount of \$412,216.00, which is subject to Federal Aviation Administration concurrence; and

WHEREAS, the City of Sunnyside City Council finds and determines that authorizing the City Manager to execute such documents is in the best interest of the residents of the City of Sunnyside and will promote the general health, safety and welfare;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WAHSINGTON, as follows:

SECTION 1. That the City Council of the City of Sunnyside hereby authorizes the City Manager to sign the Engineering Services Agreement in the amount of \$412,216.00 attached hereto as Exhibit "A" and included herein by this reference, for and on behalf of the City of Sunnyside.

SECTION 2. This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

PASSED this 14th day of August, 2017.



JAMES RESTUCCI, MAYOR

ATTEST:



DEBORAH ESTRADA, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, LLP
Attorneys for the City of Sunnyside

EXHIBIT A

ENGINEERING SERVICES AGREEMENT
FOR
CONSTRUCTION PROJECTS UNDER AIRPORT IMPROVEMENT PROGRAM

Runway 7/25 and Taxiway Improvement Project
AIP Project No. 3-53-0074-008

This AGREEMENT, made this _____ day of _____, 2017, by and between City of Sunnyside, 818 East Edison, Sunnyside, WA 98944, hereinafter called the "OWNER" and HLA Engineering and Land Surveying, Inc., 2803 River Road, Yakima, WA 98902, hereinafter called the "ENGINEER."

WITNESSETH, that the OWNER intends to improve the Sunnyside Municipal Airport at Sunnyside, Washington, consisting of the following items:

1. Rehabilitate Runway 7/25 measuring 60 feet wide, 3,422 feet long and constructed to current B-1 small standards. Major work elements include:
 - a. Replacement of the existing asphalt surface including cross-slope correction to meet current Federal Aviation Administration (FAA) standards.
 - b. Paint all new asphalt paved surfaces with enhanced black outlined markings to meet basic FAA layout standards.
2. Reconstruct the east half of the taxiway in a new location to meet ADG II separation standards. Major work elements include:
 - a. Excavation and placement of new subbase, base, and asphalt wearing course designed to meet B-1 small standards. Pavement section will be designed to meet the current fleet mix.
 - b. Fillets at two connectors to meet standards.
 - c. Relocate two existing Hold Short signs to new locations.
 - d. Replace existing taxiway reflectors.
 - e. Paint all new asphalt paved surfaces with enhanced black outlined markings to include directional steer within the area of improvement.
 - f. Remove existing taxiway pavement.

I. EMPLOYMENT OF ENGINEER

The OWNER hereby employs the ENGINEER and the ENGINEER accepts and agrees to perform the following services for the Project during 2017-2018 calendar years.

EXHIBIT A

A. CONSTRUCTION SERVICES

1. Assist OWNER with evaluation of FAA funding programs, levels, and timelines in relationship to the Project.
2. With FAA and OWNER concurrence, issue notification of award and monitor contract execution. Coordinate with successful contractor (hereinafter called "Contractor"), delivery of Contract Documents (insurance, bonds, contract, etc.).
3. Review Contractor's P-401 Asphalt mix design and submit to FAA for concurrence.
4. Attend up to two (2) tenant meetings to inform tenant group of construction progress.
5. Review Contractor's Construction Safety Plan Compliance Document for consistency with the Construction Safety Plan and Report.

Specifically omitted from the ENGINEER's duties is review of the Contractor's safety precautions, or review of the means, methods, sequences or procedures required for the Contractor to perform the work but not relating to the final or completed Project. The omitted design or review services include, but are not limited to shoring, scaffolding, underpinning, temporary retention of excavations, and any erection methods and temporary bracing.

6. Conduct preconstruction conference. Prepare and provide meeting minutes based on preconstruction conference to OWNER, FAA, and Contractor.
7. Conduct preconstruction meeting for Paving Quality Class, Contractor, Materials Testing Firms, ENGINEER staff, and OWNER prior to construction, and prepare meeting minutes.
8. Prepare documentation for OWNER and FAA to obtain authorization to issue Notice to Proceed. Prepare and transmit Notice to Proceed to Contractor.
9. The ENGINEER shall prepare and submit to the OWNER and FAA the Construction Management Program prior to beginning construction.
10. The ENGINEER shall ensure the Contractor's quality control and testing is adequate and meets OWNER requirements and FAA guidelines.
11. Review the Contractor's quality control procedures and test reports for conformance and provide documentation of acceptance or rejection to OWNER and FAA.
12. The ENGINEER shall provide acceptance sampling and testing through a subconsultant for P-401 and P-209.
13. The ENGINEER shall provide assistance and administration for quality assurance testing based on testing performed by the subconsultant.
14. Provide construction surveying.
 - a. Survey control for limits of RSA and daily construction and safety area limits.
 - b. Contractor surveyor assistance to verify bench marks and establish primary and secondary survey control.

EXHIBIT A

15. The ENGINEER shall perform contractor material submittal review and approval.
16. Provide on-site construction observation personnel to include two (2) full-time resident engineers and one (1) part-time project engineer under the supervision of the ENGINEER, in the implementation of the Project as defined in the construction contract on a daily basis to keep records, notes, plans and maps for use in preparing record drawings for the Project, and to advise the OWNER of deficiencies not corrected by the Contractor. (One hundred twenty-five (125) working days – 11.5-hour days including driving time).

The ENGINEER does not guarantee the performance of the Contractor by the ENGINEER's performance of such construction observation. The ENGINEER's undertaking hereunder shall not relieve the Contractor of his obligation to perform the work in compliance with the Plans and Specifications in a workmanlike manner; shall not make the ENGINEER an insurer to the Contractor's performance; and shall not impose upon the ENGINEER any obligation to determine the work is performed in a safe manner.

Notify the OWNER of any Project work which does not conform to the result required in the construction contract, prepare a written document describing any apparent non-conforming Project work and make recommendations to the OWNER for its correction and, at the request of the OWNER, have the recommendations implemented by the Contractor.

17. Conduct weekly construction meetings during construction. Complete and distribute meeting minutes. (Minimum of one (1) meeting per week for twenty-five (25) weeks. Personnel at meetings shall include all inspection and field engineering staff.
18. Conduct weekly safety meetings during construction. Complete and distribute meeting minutes. (Minimum of one (1) meeting per week for twenty-five (25) weeks. Personnel at meetings shall include all inspection and field engineering staff.
19. Prepare and submit daily and weekly inspection reports in accordance with FAA guidelines.
20. Respond to Contractor's Requests for Information.
21. The ENGINEER shall facilitate change order requests and field design changes by performing the following:
 - a. Evaluate change order requests and make recommendations to the OWNER.
 - b. Obtain OWNER concurrence on change orders prior to FAA submittal.
 - c. Prepare and process change orders.
22. The ENGINEER shall review Contractor's quantities and provide recommendation to the OWNER for payment requests by performing the following:
 - a. Verify field quantity calculations.
 - b. Review and total tonnage slips.
 - c. Prepare monthly progress estimate requests and submit to the OWNER for payment to the Contractor.
23. Conduct and document periodic wage rate interviews, Contractor payroll certifications, and affidavits and intents.
24. Monitor and track Disadvantage Business Enterprise participation.
25. Conduct a final inspection with the OWNER and Contractor and prepare a punchlist. Follow up on any discrepancies found during inspections.

EXHIBIT A

26. Prepare Record Drawings. Record Drawings shall be submitted to the OWNER and FAA in the following format: Two (2) complete sets of prints to the OWNER, and two (2) sets of prints to the FAA.
27. Prepare and submit the final project report to meet FAA requirements in Engineering Guidance 2013-04 dated 12/26/2012, including; project summary, cost data, testing reports, and DBE compliance to the OWNER and FAA for review and approval.
28. Assist OWNER with financial grant closeout.
29. Provided the ENGINEER observes and reviews pursuant to the terms of this contract, the ENGINEER shall not be responsible for the defects or omissions in the work as a result of the Contractor, or any subcontractors, or any of the Contractor's or subcontractor's employees, or that of any other person or entities responsible for performing any of the work contained in the construction contract.

II. COMPENSATION FOR ENGINEERING SERVICES

The OWNER shall pay the ENGINEER the following fees as complete compensation for all services rendered as herein agreed:

- A. The OWNER shall pay the ENGINEER for the services as set forth in Section I.A of this Agreement, on a cost plus fixed fee plus direct non-salary costs including subconsultant fees.

The fee for services set forth in Section I.A is \$412,216.00.

- B. Fee for services over the estimated total will be negotiated and agreed upon between the OWNER and the ENGINEER in writing prior to performance of said services.
- C. ENGINEER will submit monthly invoices on or about the first day of the month for ENGINEER's Professional Services actually completed during the prior month. OWNER agrees to pay the invoiced amounts within 45 days of receipt of invoice.

III. OWNER'S RESPONSIBILITIES

- A. The OWNER shall make available to the ENGINEER all technical data that is in the OWNER's possession required by the ENGINEER relating to his work.
- B. The OWNER shall pay for all permits and licenses that may be required by local, state, or federal authorities; and shall secure the necessary land, easements, and rights of way required for the Project.

IV. ENGINEER'S RESPONSIBILITIES

- A. OWNER's review or approval of, or payment for, any plans, drawings, designs, specifications, reports, and incidental work or services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy, completeness, or accuracy of its work and the project work. OWNER's review, approval, or payment for any of the services shall not be construed to operate as a waiver of any rights under this Agreement or at law or any cause of action arising out of the performance of this Agreement.

EXHIBIT A

- B. In performing work and services hereunder, the ENGINEER and its subcontractors, subconsultants, employees, agents, and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of OWNER in any manner whatsoever. The ENGINEER shall not hold itself out as, nor claim to be, an officer or employee of OWNER by reason hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of OWNER. The ENGINEER shall be solely responsible for any claims for wages or compensation by ENGINEER employees, agents, and representatives, including subconsultants and subcontractors, and shall save and hold OWNER harmless therefrom.
- C. INDEMNIFICATION:
1. ENGINEER agrees to defend, indemnify, and hold harmless the OWNER, its elected officials, agents, officers, and employees (hereinafter "parties protected") from (1) claims, demands, liens, lawsuits, administrative and other proceedings, and (2) judgments, awards, losses, liabilities, damages, penalties, fines, costs and expenses (including legal fees, costs, and disbursements) of any kind claimed by third parties arising out of, or related to any death, injury, damage or destruction to any person or any property to the extent caused by any negligent act, action, default, error or omission or willful misconduct arising out of the ENGINEER's performance under this Agreement. In the event that any lien is placed upon the OWNER's property or any of the OWNER's officers, employees or agents as a result of the negligence or willful misconduct of the ENGINEER, the ENGINEER shall at once cause the same to be dissolved and discharged by giving bond or otherwise.
 2. OWNER agrees to indemnify, defend, and hold the ENGINEER harmless from loss, cost, or expense, including legal fees, of any kind claimed by third parties, including without limitation such loss, cost, or expense resulting from injuries to persons or damages to property, to the extent caused by the negligence or willful misconduct of the OWNER, its employees, or agents in connection with the Project.
 3. If the negligence or willful misconduct of both the ENGINEER and the OWNER (or a person identified above for whom each is liable) is a cause of such third party claim, the loss, cost, or expense shall be shared between the ENGINEER and the OWNER in proportion to their relative degrees of negligence or willful misconduct and the right of indemnity will apply for such proportion.
 4. Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.
- D. In any and all claims by an employee of the ENGINEER, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or types of damages, compensation, or benefits payable by or for the ENGINEER or a subcontractor under workers' or workmen's' compensation acts, disability benefit acts, or other employee benefit acts.
- E. It is understood that any resident engineering or inspection provided by ENGINEER is for the purpose of determining compliance with the technical provisions of Project

EXHIBIT A

specifications and does not constitute any form of guarantee or insurance with respect to the performance of a contractor. ENGINEER does not assume responsibility for methods or appliances used by a contractor, for a contractor's safety programs or methods, or for compliance by contractors with laws and regulations. OWNER shall use its best efforts to ensure that the construction contract requires that the Contractor(s) indemnify and name OWNER, the OWNER'S and the ENGINEER's officers, principals, employees, agents, representatives, and engineers as additional insureds on contractor's insurance policies covering Project, exclusive of insurance for ENGINEER professional liability.

- F. **SUBSURFACE INVESTIGATIONS:** In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observation, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the ENGINEER, to the extent that ENGINEER has exercised the applicable standard of professional care and judgment in such investigations.

V. INSURANCE

- A. At all times during performance of the work, ENGINEER shall secure and maintain in effect insurance to protect the OWNER and ENGINEER from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of this Agreement. ENGINEER shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The OWNER reserves the right to require higher limits should it deem it necessary in the best interest of the public.
1. Commercial General Liability Insurance: Before this Contract is fully executed by the parties, ENGINEER shall provide the OWNER with a certificate of insurance as proof of commercial liability insurance and commercial umbrella liability insurance with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The policy shall name the OWNER, its elected officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the OWNER thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.
 2. Commercial Automobile Liability Insurance:
 - a. If ENGINEER owns any vehicles, before this Contract is fully executed by the parties, OIC shall provide the OWNER with a certificate of insurance as proof of commercial automobile liability insurance and commercial umbrella liability insurance with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage. Automobile liability will apply to "Any Auto" and be shown on the certificate.

EXHIBIT A

- b. If ENGINEER does not own any vehicles, only "Non-owned and Hired Automobile Liability" will be required and may be added to the commercial liability coverage at the same limits as required in that section of this Agreement, which is Section V.A.1. entitled "Commercial Liability Insurance."
 - c. Under either situation described above in Section V.A.2.a. and Section V.A.2.b., the required certificate of insurance shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The policy shall name the OWNER, its elected officials, officers, agents, employees, and volunteers as additional insureds. The insured shall not cancel or change the insurance without first giving the OWNER thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.
3. Statutory workers' compensation and employer's liability insurance as required by State law.
 4. Professional Liability Coverage: Before this Agreement is fully executed by the parties, ENGINEER shall provide the OWNER with a certificate of insurance as proof of professional liability coverage with a total minimum liability limit of Two Million Dollars (\$2,000,000.00) per claim combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The insured shall not cancel or change the insurance without first giving the OWNER thirty (30) days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide. If the policy is written on a claims made basis, the coverage will continue in force for an additional two years after the completion of this Agreement.

Failure of either or all of the additional insureds to report a claim under such insurance shall not prejudice the rights of the OWNER, its officers, employees, agents, and representatives thereunder. The OWNER and the OWNER's officers, principals, employees, representatives, and agents shall have no obligation for payment of premiums because of being named as additional insured under such insurance. None of the policies issued pursuant to the requirements contained herein shall be canceled, allowed to expire, or changed in any manner that affects the rights of the OWNER until thirty (30) days after written notice to the OWNER of such intended cancellation, expiration or change.

VI. RESERVATIONS AND COMPLIANCE

- A. The ENGINEER reserves the right to obtain the services of other Consulting Engineers experienced in Airport work to prepare and execute the work which is related to the project within the scope of services and fees contained herein. All subconsultants are subject to the review and approval of the OWNER. The OWNER acknowledges that quality assurance testing, electrical, and pavement specialist subconsultants will be utilized for this Project.

EXHIBIT A

- B. During the performance of this Agreement, the ENGINEER, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following requirements and those identified in Exhibit B:
1. Access to Records and Reports. *(2 CFR § 200.326 and 2 CFR § 200.333)*
 2. Breach of Contract Terms. *(2 CFR § 200 Appendix II(A))*
 3. Civil Rights – General. *(49 USC § 47123)*
 4. Civil Rights – Title VI Assurances.
 5. Clean Air and Water Pollution Control. *(2 CFR § 200 Appendix II (G))*
 6. Debarment and Suspension. *(2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility)*
 7. Disadvantaged Business Enterprise. *(49 CFR part 26)*
 8. Federal Fair Labor Standards Act. *(29 USC § 201, et seq.)*
 9. Lobbying and Influencing Federal Employees. *(49 CFR part 20, Appendix A)*
 10. Occupational Safety and Health Act of 1970. *(20 CFR part 1910)*
 11. Termination of Contract. *(2 CFR § 200 Appendix II(B))*
 12. Trade Restriction Clause. *(49 CFR part 30, 49 USC 50104)*
 13. Energy Conservation Requirements. *(2 CFR § 200 Appendix II(H))*
 14. Veteran's Preference. *(49 USC § 47112c)*
 15. Distracted Driving. *(Executive Order 13513 and DOT Order 3902.10)*

VII. TERMINATION OF AGREEMENT

TERMINATION FOR CONVEIENCE

The OWNER may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of this notice of termination, except as explicitly directed by the OWNER, the Consultant must immediately discontinue all services affected.

Upon termination of this Agreement, the Consultant must deliver to the OWNER all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the ENGINEER under this Contract, whether complete or partially complete.

OWNER agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

OWNER further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

TERMINATION FOR DEFAULT

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of this Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party 7 days advance written notice of its intent to terminate this Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

EXHIBIT A

- A. Termination by OWNER: The OWNER may terminate this Agreement in whole or in part, for the failure of the Consultant to:
- a. Perform the services with the time specified in this Contract or by OWNER approved extension;
 - b. Make adequate progress so as to endanger satisfactory performance of the Project;
 - c. Fulfill the obligations of this Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of this Agreement, the Consultant must deliver to the OWNER all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the ENGINEER under this Contract, whether complete or partially complete.

OWNER agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

OWNER further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the OWNER determines the Consultant was not in default of this Agreement, the rights and obligations of the parties shall be the same as if the OWNER issued the termination for the convenience of the OWNER.

- B. Termination by Consultant: The Consultant may terminate this Agreement in whole in part, if the OWNER:
- a. Defaults on its obligations under this Agreement;
 - b. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
 - c. Suspends the Project for more than 180 days due to reasons beyond the control of the Consultant.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of this Agreement, the Consultant must deliver to the OWNER all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the ENGINEER under this Contract, whether complete or partially complete.

In the event of termination due to OWNER breach, the ENGINEER is entitled to invoice OWNER and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination

EXHIBIT A

action. OWNER agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

VIII. CERTIFICATION OF ENGINEER

The OWNER and the ENGINEER hereby certify that the ENGINEER has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- A. Employ or retain, or agree to employ or retain, any firm or persons.
- B. Pay, or agree to pay, to any firm, person, or organization any fee, contribution, donation, or consideration of any kind.

IX. SUCCESSORS AND ASSIGNMENTS

- A. The OWNER and ENGINEER each bind themselves, their partners, successors, executors, administrators, and assigns to the other parties to this Agreement, and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement.
- B. Except as above, neither the OWNER nor the ENGINEER shall assign, sublet, or transfer their interest or obligation hereunder in this Agreement without the written consent of the other.
- C. It is understood by the OWNER and the ENGINEER that the FAA is not a party to this Agreement and will not be responsible for engineering costs except as should be agreed upon by the OWNER and the FAA under a Grant Agreement for the project. Owner approval of this Engineering Services Agreement is conditioned upon and subject to FAA approval.

X. CIVIL RIGHTS AND TITLE VI ASSURANCES

The ENGINEER agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

EXHIBIT A

- A. The period during which the property is used by the airport Sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- B. The period during which the airport Sponsor or any transferee retains ownership or possession of the property.

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the ENGINEER, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- A. COMPLIANCE AND REGULATIONS: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. NON-DISCRIMINATION: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- C. SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT: In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- D. INFORMATION AND REPORTS: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. SANCTIONS FOR NONCOMPLIANCE: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - 1. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - 2. Cancelling, terminating, or suspending a contract, in whole or in part.

EXHIBIT A

- F. INCORPORATION OF PROVISIONS: The Contractor will include the provisions of paragraphs A through F from this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- B. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- H. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- I. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with

EXHIBIT A

disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

XI. MINORITY BUSINESS ENTERPRISE (MBE) ASSURANCES

- A. POLICY: It is the policy of the Department of Transportation (DOT) that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement.
- B. MBE OBLIGATION: The Contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

XII. LITIGATION FEES AND EXPENSES

In the event suit or action be instituted to enforce any of the terms or conditions of this Agreement, the losing party shall pay to the prevailing party, in addition to the costs and disbursements allowed by statute, such sum as the court may adjudge reasonable as attorney fees in such suit or action, in both trial and appellate court. Since the FAA is not a party to this Agreement, it cannot be held liable for actions under this section.

XIII. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Washington. Venue shall be in Yakima County.

IN WITNESS WHEREOF, the OWNER and the ENGINEER hereto have made and executed this Agreement the day and year first above written.

EXHIBIT A

OWNER:

ENGINEER:

CITY OF SUNNYSIDE

HLA ENGINEERING AND LAND SURVEYING, INC.

BY: _____
Donald D. Day

BY: _____
Michael T. Battle, PE

TITLE: City Manager

TITLE: President

ATTEST: _____
Deborah Estrada

TITLE: City Clerk

EXHIBIT A

EXHIBIT "A"

Exhibit A

Consultant Cost Computations - Summary Sheet
(Cost Plus Fixed Fee, Cost Per Unit of Work)

Project: Sunnyside Municipal Airport, Runway 7/25 and Taxiway Improvement Project 2017

Direct Salary Cost (DSC):

<u>Classification</u>	<u>Rate</u>
Senior Principal Engineer	\$75.00
Licensed Principal Land Surveyor	\$69.00
Other Professional	\$62.00
Licensed Professional Land Surveyor	\$35.10
Licensed Professional Engineer	\$40.00
Contract Administrator	\$31.65
CAD Technician	\$27.00
Resident Engineer	\$38.10
Surveyor	\$33.30
Engineering Technician	\$20.00
Word Processing Technician	\$25.00

Note: Rates are subject to change on January 1 and June 1 of each calendar year, and from time to time due to periodic wage increases and/or new annual audited overhead rate.

Overhead (OH Cost - including Salary Additives):

OH Rate x DSC 133.45%

Fixed Fee (FF):

[(OH Rate x DSC) + DSC] x FF Rate 15.00%

Reimbursables:

Mileage is reimbursed at the IRS rate applicable at the time.
Postage/shipping based on receipts submitted as part of task.

Prepared by: Michael T. Battle, PE

Date: 8/2/2017

EXHIBIT A

EXHIBIT "B"

EXHIBIT A

ACCESS TO RECORDS AND REPORTS

The ENGINEER must maintain an acceptable cost accounting system. The ENGINEER agrees to provide the OWNER, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The ENGINEER agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the ENGINEER or its subconsultants may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this AGREEMENT.

OWNER will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the Contract. Owner reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the OWNER elects to terminate the Contract. The OWNER's notice will identify a specific date by which the Consultant must correct the breach. OWNER may proceed with termination of the Contract if the Consultant fails to correct the breach by deadline indicated in the OWNER's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

CLEAN AIR AND WATER POLLUTION CONTROL

ENGINEER agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The ENGINEER agrees to report any violation to the OWNER immediately upon discovery. The OWNER assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) above, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of

EXHIBIT A

work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or the OWNER shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.
4. Subcontractors. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

CERTIFICATE REGARDING DEBARMENT AND SUSPENSION (BIDDER OR OFFEROR)

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION (SUCCESSFUL BIDDER REGARDING LOWER TIER PARTICIPANTS)

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a "covered transaction," must verify each lower tier participant of a "covered transaction" under the Project is not presently debarred or otherwise disqualified from participation in this federally assisted Project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>
2. Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA later determines that a lower tier participant failed to tell a higher tier that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

EXHIBIT A

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) - The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29) - The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime Contractor receives from the Sponsor. The prime Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Sponsor. This clause applies to both DBE and non-DBE subcontractors.

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

The consultant has full responsibility to monitor compliance to the referenced statute or regulation. The consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

The bidder or offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreement) that all sub-recipients shall certify and disclose accordingly.

EXHIBIT A

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Consultant retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

TRADE RESTRICTION CLAUSE

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:

- A. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- B. Has not knowingly entered into any contract or subcontract for this Project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- C. Has not entered into any subcontract for any product to be used on the Federal Project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

The Offeror/Contractor must provide immediate written notice to the OWNER if the offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor:

- A. Who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or;

EXHIBIT A

- B. Whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or;
- C. Who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the OWNER cancellation of the contract or subcontract for default at no cost to the OWNER or FAA.

VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Consultant and all subconsultants must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

DISTRACTED DRIVING

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or sub-grant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the Project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the Project.

ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C 6201et seq).